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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0302(JGK)

5 DON LICHTERMAN,

6 Defendant.

7 -----x

8 February 11, 2016

9 2:47 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: SHAWN CROWLEY

Assistant United States Attorney

18 THE LAW OFFICES OF JEFFREY LICHTMAN

Attorneys for Defendant

19 BY: JEFFREY B. LICHTMAN

20 JEFFREY BENSON EINHORN

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1 THE CLERK: United States of America versus Don
2 Lichterman.

3 Will all parties please state who they are for the
4 record.

5 MS. CROWLEY: Good afternoon, your Honor. Shawn
6 Crowley for the government.

7 THE COURT: Good afternoon.

8 MR. LICHTMAN: Jeffrey Lichterman and Jeffrey Einhorn
9 for the defendant. Good afternoon, your Honor.

10 MR. EINHORN: Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 I note that the defendant is present.

13 I've received the presentence report prepared
14 September the 8th, 2015, revised October 2, 2015. I received
15 the defense submission dated January 8, 2016, and the
16 government's submission dated January 18, 2016.

17 At the outset, there are some objections which I think
18 should be dealt with at the outset.

19 In paragraphs 27 and 28, I will add in paragraph 28
20 that "This conviction was vacated by order dated October 15,
21 2015."

22 Government agree?

23 MS. CROWLEY: Yes, your Honor.

24 THE COURT: In paragraphs 31 and 32, I will add in
25 paragraph 32, "This conviction was vacated by order dated

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1 October 15, 2015." Government agree?

2 MS. CROWLEY: Yes, your Honor.

3 THE COURT: In paragraph 69, I will change \$31,698,000
4 to \$31,698. Government agrees?

5 MS. CROWLEY: Yes, your Honor.

6 THE COURT: OK. Mr. Lichtman, have you reviewed the
7 presentence report, the recommendation and the addendum and
8 discussed them with the defendant?

9 MR. LICHTMAN: I have, your Honor.

10 THE COURT: Other than I've already gone over, do you
11 have any objections?

12 MR. LICHTMAN: No, your Honor.

13 THE COURT: I will listen to you for anything you
14 would like to tell me in connection with sentence, any
15 statement you would like to make, anything at all.

16 MR. LICHTMAN: Your Honor, may I approach the lectern?

17 THE COURT: Sure, by all means.

18 MR. LICHTMAN: Thank you.

19 Your Honor, this is actually a very strange and
20 frustrating case for us; it has been since our entry into the
21 case. I have been doing this for probably 25 years now, I
22 believe, and at some point you start thinking that you've seen
23 it all and you never have. Just when you think you have seen
24 it all, something else comes up in this business that sort of
25 shocks you.

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1 The case itself, the facts of it, it was such an
2 utterly avoidable situation, and you can say that about almost
3 any criminal case but this one especially. This was a simple,
4 copyright infringement case in which Mr. Lichterman sent out a
5 forged, very obviously poorly drawn order to opposing counsel
6 because of his anger at having his litigants, his opponents,
7 the plaintiffs speaking poorly about him online. And then he
8 sent out some emails from an attorney supposedly trying to get
9 this poorly drawn, obviously fake order enforced, and here's
10 where we are.

11 This is something that --

12 THE COURT: In the course of that, he was warned by
13 the --

14 MR. LICHTMAN: Yes.

15 THE COURT: -- judge that this could well be a federal
16 offense.

17 MR. LICHTMAN: Yes.

18 And the point of the conduct here is that there was no
19 chance it could have succeeded. Obviously, it couldn't
20 succeed. And when we got the case, our initial thought was,
21 well, my God, you clearly couldn't see beyond right what was in
22 front of your nose, which was the bad things that were being
23 said about him online. He had a very angry -- violently angry
24 reaction, and the following steps occurred that he committed
25 and here we are. And it was shocking because there was clearly

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1 no reflection to see what would happen when they get these
2 obviously poorly drawn orders with attorneys that know what
3 orders actually look like. There was never any effort.

4 But if I can, I want to go back to our dealings with
5 Mr. Lichterman and how these two things intersected, his
6 conduct in the case and what we learned about him at the time.

7 When we first began representing him, he struck me as
8 a highly intelligent, curious, interested client/defendant. We
9 had wonderful discussions about the law and about the case, and
10 our representation was going swimmingly for a few weeks, I
11 suppose. Then all of a sudden we started getting these
12 bizarre, angry emails, accusatory, out of nowhere. And I'm not
13 saying this certainly, your Honor, to demean the client but to
14 give you some context as to what happened here.

15 We would try to talk him down. I talked to his
16 mother, tried to find out what is going on here. It just
17 seemed very strange that an otherwise intelligent, competent,
18 capable man was coming up with the most bizarre accusations.
19 And as I said, Judge, I've been doing this for 25 years. I've
20 represented cartel leaders. I've represented organized crime
21 heads of family. I've represented every type of violent
22 criminal that there is. I've never experienced something like
23 this in 25 years, Judge. The anger and the reaction was almost
24 volcanic and out of nowhere, and there was nothing based in
25 reality where it was coming from.

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1 And Mr. Einhorn and I were treading carefully at this
2 point. We didn't really know what to do. We didn't know
3 should we stay on the case. Was it something that we should
4 bring to your Honor's attention? We didn't know what to do.
5 I've never had a situation like this because as quickly as the
6 outbursts would come, they would then die back down. And just
7 when I thought maybe this is something I need to go to the
8 Judge with, he would come back down to earth and he would be
9 fine.

10 So at this point, as we were, as I've said, treading
11 carefully with him, I asked Mr. Lichterman -- which I thought
12 was a question that I thought I would get a completely
13 different answer -- I said have you ever seen a psychiatrist
14 before, and he said no. He's 51 years old now. Never. I
15 said, look, I was a psychology major in college but you almost
16 get more psychology training as a criminal defense lawyer than
17 anything I ever could have learned in school. I said, I have
18 to tell you, I think you're bipolar because you just seemed
19 like Exhibit A of what a bipolar personality should be. And
20 clients have all sorts of psychological afflictions but never
21 as black and white and as extreme as I have seen with
22 Mr. Lichterman.

23 So we asked him, you know, you should go see a
24 psychiatrist. He resisted and he said, no, there is no reason.
25 Why do I need to go? I'm fine. And as I said, we almost quit

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1 the case a few times. We were going to come to you and explain
2 the whole situation. And finally we insisted. We told him
3 that you have to see a psychiatrist. You have to because we're
4 not getting the full picture of what you are here. The letters
5 that we were getting in on his behalf were wonderful. You've
6 read the letters. They're extraordinary, I would say. So we
7 insisted that he get psychiatric help, and we felt bad for him
8 because he was suffering to a degree that we could see -- he
9 couldn't see it but anybody around him could see the bizarre
10 tremendous amount of suffering that he was going through. And
11 he went to see a psychiatrist and all of a sudden, just like
12 that, everything changed.

13 And the thing that was frustrating for us was that we
14 were having this horrible behavior from him and then we were
15 getting these letters and we were seeing this life of decency,
16 where he's a kind friend to all the people around him, he's not
17 just somebody who cares about animals but someone who goes the
18 extra yard, rescues animals. I'm an animal lover but, Judge,
19 I'm not looking to go across the country and preventing animals
20 from being gassed to death. The level and the extent of his
21 interest and care for all things vulnerable was extraordinary
22 to us. The Special Olympics, where he is a coach of children
23 and adults with special needs, all sorts of charitable groups,
24 and, as I said, the one common denominator is that he is
25 treating and caring for people that are vulnerable like him.

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1 So when went to the psychiatrist and immediately --
2 almost immediately the psychiatrist -- we had gotten permission
3 to speak to him -- and he said, of course he's bipolar. You
4 know, how could this have gone untreated -- he's 51 years old,
5 his entire life? And that's what the psychiatrist asked us.
6 He's like this is eminently treatable. We give him medication
7 and he's fine. 51 years, Judge, and he's been living with
8 this.

9 So he began the medication. He began therapy. He's
10 seeing actually two psychiatrists at this point and also a
11 clinical social worker, a licensed clinical social worker. And
12 almost his entire disposition changed on a dime. From someone
13 that had highs and lows and all -- everybody in his life was
14 working on egg shells around him -- all of a sudden, a guy who
15 has flattened out and it was just like that.

16 And as I was getting ready for the sentencing, I was
17 thinking back to just the wreckage of this man's life because
18 of the failure of anyone to force him -- it wasn't so easy --
19 to force someone to go to a psychiatrist, I suppose, when they
20 don't want to. And you read about how his upbringing and how
21 he learned about his father, who we thought was his father was
22 not his real father. I don't know if that had anything to do
23 with it. I don't know if that's the case, but it was certainly
24 a strange thing to learn when you're about 12 years old that
25 your father is actually your adopted father.

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1 But I think about the wreckage of this life that had
2 he gone to a psychiatrist perhaps when he was 10 or 11 or 12
3 years olds when he started exhibiting these signs, maybe
4 everything changes. Maybe we're not here -- probably we're not
5 here. He's 51 years old. He's been through job after job
6 after job after job because he has had difficulty getting along
7 with people. What a shock? Certainly anybody that's had any
8 exposure to him will all say -- everyone says the same thing --
9 he would have a family by now. Now he's living with his
10 parents and he's been completely devastated. This is the
11 culmination. This is the end.

12 This is really a tragic story, a life that was
13 destroyed by mental illness. But it ends in this courtroom.
14 And, you know, I don't know how many times I've been in courts
15 and I've said to judges, well, you know, this was a wake-up
16 call, your Honor, and I suppose this is -- this is the one time
17 that I can really say it and it's not advocacy. It really
18 isn't. That if he hadn't done this, if he hadn't gotten
19 arrested, if we didn't end up in front of you, if we didn't
20 have to fight for him at a sentencing, maybe this goes on
21 forever and his life just goes on 'til the end with this anger,
22 with this rage, with this dysfunction, with this mental
23 disease. And that's what it is, it is a mental disease. So in
24 a way he's lucky that he's here today.

25 Whatever is going to happen to him today, your

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1 Honor -- and, again, I say this with all respect -- this man
2 has been punished and has suffered in ways that are just
3 unimaginable, for 40 years.

4 So what I'm asking for today, your Honor, because I
5 strongly believe that this is not the sort of crime for him
6 that necessarily needs to be deterred, because I firmly believe
7 that it was the disease that had a large part to do with this,
8 and I don't have the exposure to him for 40 years but I've had
9 exposure for a couple of years now and I've seen the highs,
10 I've seen the lows, and I've never seen this level, since we've
11 known him, where he's steady, he's completely engaging, he's
12 calm. It never existed. He's never seen it. His family has
13 never seen it.

14 And I would respectfully request that for a crime that
15 was not done out of greed, there was nothing venal about this,
16 it just was simply a violently angry reaction to somebody
17 talking smack about him on the Internet that caused us to end
18 up where we are today, and I would ask your Honor, because of
19 all of that, and because of the fact that this disease was
20 untreated for so long, that we get a noncustodial sentence, a
21 probationary sentence, with the condition that he continue the
22 mental health treatment that he's getting, that he continue the
23 medication, that he continue whatever the doctors say he needs
24 to do, and I don't think we'll have a problem with him because
25 something that he fought us at the beginning he now happily

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embraces because he finally has some peace after an entire
lifetime of, frankly, horrors.

Thank you, your Honor.

THE COURT: Thank you, Mr. Lichtman.

Mr. Lichterman, have you reviewed the presentence
report, the recommendation and the addendum and discussed them
with your lawyer?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Other than what I've already covered, do
you have any objections?

THE DEFENDANT: No, I don't, your Honor.

THE COURT: I'll listen to you for anything that you
would like to tell me in connection with sentence, any
statement you would like to make.

THE DEFENDANT: Yes. I appreciate it.

THE COURT: Anything at all you would like to tell me.

THE DEFENDANT: I want to state how much I'm truly
ashamed and how truly embarrassed I am by what I've done. I
can easily say that I will never have any troubles with the law
again.

I would also like to give a personal apology to you,
Judge Koeltl, and to the Assistant United States Attorney Shawn
Crowley and to the government for using their time.

Most importantly, I would like to apologize to Judge
McMahon along with Risa Abramson and to the lawyers that were

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1 oppressed for making them the victims of my criminal conduct.
2 I meant no disrespect to anyone. I meant no harm to anyone.
3 And I'm very, very sorry for it.

4 THE COURT: All right. Thank you.

5 All right. Before I call on the government, it
6 occurred to me in going over the sentence and listening to
7 comments today that I should at least raise with everyone. I
8 asked myself whether there was any reason that I should
9 disqualify myself because the seal that was involved was the
10 seal from one of my colleagues. I appreciate that in some
11 cases where there are physical threats to other colleagues,
12 judges disqualify themselves. In this case I never saw a
13 reason to do it. None of the parties raised an issue with me,
14 and I still don't see any reason. There is nothing about the
15 facts of this case that influences anything that I do or would
16 do in the case, but I raise it with all of you to see whether
17 all of you agree.

18 MS. CROWLEY: The government certainly agrees, your
19 Honor.

20 MR. LICHTMAN: As does the defense, your Honor.

21 THE COURT: OK. So now I'll call on Ms. Crowley. Has
22 the government reviewed the presentence report, the
23 recommendation and the addendum?

24 MS. CROWLEY: I have, your Honor.

25 THE COURT: Does the government have any objections

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1 other than I've already covered?

2 MS. CROWLEY: No, your Honor.

3 THE COURT: I'll listen to you for anything the
4 government would like to tell me in connection with sentence.

5 MS. CROWLEY: Your Honor, I don't have anything to add
6 beyond what is in the submission that I put in in January and
7 the presentence report. Unless the Court has questions for me,
8 I will just leave it at that.

9 THE COURT: No. Thank you.

10 All right. I'll place the presentence report, the
11 recommendation and the addendum in the record under seal. I'll
12 place the parties' submissions to me also in the record under
13 seal. The parties should review their submissions and to the
14 extent that they haven't, should put them in the record not
15 under seal after they've gone over them to make sure that there
16 is no personal identifying information or confidential medical
17 information.

18 OK. I adopt the findings of fact in the presentence
19 report except as I've already noted. Therefore, I conclude
20 that under the current guidelines, the total offense level is
21 12, the Criminal History Category is I, and the guidelines'
22 sentencing range is 10 to 16 months.

23 I appreciate that the guidelines are only advisory and
24 that the Court must consider the various sentencing factors in
25 18 U.S.C. Section 3553(a), and impose a sentence that is

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1 sufficient but no greater than necessary to comply with the
2 purposes set forth in Section 3553(a)(2).

3 It is plain that the offense is serious. The
4 defendant was responsible for using a fraudulent order
5 purportedly signed by a judge and sealed by the Clerk. The
6 defendant continued to do this after being alerted by the judge
7 that it was a federal crime. There are mitigating
8 circumstances. The defendant is suffering from bipolar
9 disorder, which was not diagnosed at the time and likely played
10 a role in the offense. The defendant is now receiving
11 treatment, and any period of incarceration would interfere with
12 that treatment. The offense is also a strange offense, because
13 the defendant continued to do it after he was aware that the
14 authorities were alerted to the offense.

15 A guidelines' sentence in this case would call for
16 five months imprisonment and five months home confinement
17 because the sentence is in Zone C. A sentence that increases
18 the period of home confinement in lieu of incarceration would
19 be a sentence that is sufficient but no greater than necessary
20 to meet the goals of sentencing, particularly to reflect the
21 seriousness of the offense and the need for deterrence.

22 Therefore, in this case, the Court intends to impose a
23 sentence of time served on Count One to be followed by a
24 three-year term of supervised release, with the standard
25 conditions of supervised release in this district and those

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1 recommended by the Probation Department, together with 10
2 months home confinement, together with electronic monitoring
3 and 100 hours of community service.

4 The Court will impose a fine of \$3,000. The Court
5 will not impose restitution because there is no victim under 18
6 U.S.C. Section 3663. The Court will impose a \$100 special
7 assessment.

8 The sentence is consistent with the factors in Section
9 3553(a) and is sufficient but no greater than necessary to
10 comply with the purposes of Section 3553(a)(2). It recognizes
11 the seriousness of the offense and the need for deterrence. On
12 the other hand, there are mitigating circumstances,
13 particularly the defendant's mental condition and the need for
14 continuity of mental health treatment. Because the downward
15 variance is not substantial, the sentence does not result in
16 unwarranted sentencing disparities.

17 I've explained the reasons for the sentence. Before I
18 actually impose the sentence, Mr. Lichtman, I'll recognize you
19 for anything you wish to tell me.

20 MR. LICHTMAN: Your Honor, I would just ask for the
21 home confinement, electronic monitoring, that does anticipate
22 him leaving the home for work?

23 THE COURT: Oh, sure.

24 MR. LICHTMAN: OK.

25 THE COURT: Sure. It would be to leave the home for

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1 work, religious services, and any other reasons approved by the
2 Probation Department.

3 MR. LICHTMAN: And I would obviously want that to
4 include all of his volunteering work and whatnot, actually also
5 impact the community service that you've imposed also.

6 THE COURT: Well, obviously for community service and
7 volunteer services.

8 MR. LICHTMAN: Thank you, your Honor.

9 THE COURT: All right. Before I actually impose the
10 sentence, I'll recognize the defendant for anything you wish to
11 tell me.

12 (Pause)

13 THE DEFENDANT: Oh, no, your Honor.

14 THE COURT: OK. Before I actually impose the
15 sentence, I'll recognize the government for anything the
16 government wishes to tell me.

17 MS. CROWLEY: Nothing to add. Thank you.

18 THE COURT: All right. Pursuant to the Sentencing
19 Reform Act of 1984, it is the judgment of this Court that the
20 defendant, Don Lichterman, is hereby committed to the custody
21 of the Bureau of Prisons to be imprisoned for a term of time
22 served on Count One. Upon release from imprisonment, the
23 defendant shall be placed on supervise release for a term of
24 three years.

25 Within 72 hours, the defendant shall report in person

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1 to the Probation Office in this district. While on supervised
2 release, the defendant shall comply with the standard
3 conditions of supervised release in this district. The
4 defendant shall not commit another federal, state or local
5 crime. The defendant shall not possess a firearm or
6 destructive device, as defined in 18 U.S.C. Section 921. The
7 defendant shall refrain from any unlawful use or possession of
8 a controlled substance. The defendant shall submit to one drug
9 test within 15 days of release from imprisonment and at least
10 two periodic drug tests thereafter, as directed by the
11 probation officer.

12 The defendant shall be subject to home confinement for
13 10 months together with electronic monitoring, in accordance
14 with the standard conditions of home confinement and electronic
15 monitoring in this district.

16 Exceptions to electronic monitoring include work,
17 religious services, community service and volunteer service.
18 Home confinement is to begin at a time set by the probation
19 officer.

20 The defendant shall serve 100 hours of community
21 service.

22 The defendant shall cooperate in the collection of
23 DNA, as directed by the probation officer.

24 The defendant shall participate in an outpatient
25 mental health treatment program approved by the United States

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1 Probation Office.

2 The defendant shall continue to take any prescribed
3 medications unless otherwise instructed by the healthcare
4 provider.

5 The defendant shall contribute to the cost of services
6 rendered based on the defendant's ability to pay and
7 availability of third-party payments. The Court authorizes the
8 release of available psychological and psychiatric evaluations
9 and reports, including the presentence investigative report, to
10 the healthcare provider.

11 The defendant shall comply with the conditions of
12 location monitoring for a period of 10 months, which program
13 may include electronic monitoring or voice identification.
14 During this period, the defendant will remain at his place of
15 residence except for employment, religious services, community
16 service and volunteer service and other activity approved by
17 the probation officer.

18 The defendant will maintain a telephone at his place
19 of residence without Call Forwarding, a modem, Caller ID, Call
20 Waiting or portable cordless telephones for the above period.

21 Location monitoring shall commence on a date to be
22 determined by the probation officer. Should location
23 monitoring be imposed, the defendant shall pay the cost of
24 location monitoring on a self-payment or copayment basis as
25 directed by the probation officer.

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1 The defendant shall pay a fine of \$3,000.

2 It is further ordered that the defendant shall pay to
3 the United States a special assessment of \$100, which shall be
4 due immediately.

5 I've already explained the reasons for the sentence.
6 Does either counsel know of any legal reason why the sentence
7 should not be imposed as I've so stated it?

8 MS. CROWLEY: No, your Honor.

9 MR. LICHTMAN: No, your Honor.

10 THE COURT: OK.

11 MR. LICHTMAN: Your Honor, if I could just add one
12 thing?

13 THE COURT: Sure.

14 MR. LICHTMAN: Mr. Lichterman is actually located in
15 southern New Jersey, so he'll be visiting a probation officer
16 in south Jersey.

17 THE COURT: OK. I think that that's arranged with the
18 Probation Office --

19 MR. LICHTMAN: Yes.

20 THE COURT: -- in this district.

21 MR. LICHTMAN: Yeah. I think it is already in place,
22 actually, because he has had some contact with probation. I
23 just wanted your Honor to know and put it on the record that
24 that's where he'll be heading.

25 THE COURT: That's fine.

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1 MR. LICHTMAN: Thank you.

2 THE COURT: I've plainly -- I've included 10 months of
3 home confinement. The Probation Department had also
4 recommended location monitoring for a period of five months.
5 So, I've done location monitoring for 10 months. The
6 electronic monitoring that goes along with location monitoring
7 appears to be the same electronic monitoring that goes along
8 with home confinement. So any reason that I shouldn't have
9 both conditions there?

10 MR. LICHTMAN: I don't see any reason not, your Honor.
11 It's fine.

12 THE COURT: OK.

13 (Pause)

14 Mr. Fletcher asks if he should check off that the
15 defendant should be monitored in the district of residence --
16 supervised in the district of residence, and that's fine by me.

17 MR. LICHTMAN: Yes, your Honor.

18 THE COURT: OK. All right. I've already explained
19 the reasons for the sentence. Does either counsel know of any
20 legal reason why the sentence should not be imposed as I've so
21 stated it?

22 MS. CROWLEY: No, your Honor.

23 MR. LICHTMAN: No, your Honor.

24 THE COURT: All right. I'll order the sentence to be
25 imposed as I've so stated it.

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1 There is a waiver of the right to appeal, yes?

2 MS. CROWLEY: Yes, your Honor.

3 MR. LICHTMAN: Yes, your Honor.

4 THE COURT: Does either counsel know of any legal
5 reason why the waiver is not effective?

6 MS. CROWLEY: No, your Honor.

7 MR. LICHTMAN: No, your Honor.

8 THE COURT: All right. Mr. Lichterman, the reason
9 that I ask these questions is that generally a defendant has
10 the right to appeal the sentence. The notice of appeal must be
11 filed within 14 days after the entry of the judgment of
12 conviction. The judgment of conviction is entered promptly
13 after the judge announces the sentence. If the defendant
14 cannot pay the cost of appeal, the defendant has the right to
15 apply for leave to appeal in forma pauperis. If the defendant
16 requests, the Clerk will prepare and file a notice of appeal on
17 the defendant's behalf immediately. And the rules require that
18 a judge inform a defendant of this right to appeal.

19 In this case, the parties advise that you have given
20 up, or waived, your right to appeal, and I'm confident that
21 when I took your plea I went over with you the waiver of the
22 right to appeal. So, it appears that you have given up, or
23 waived, your right to appeal. I go over this with you now
24 because I want to make sure that you talk about this issue with
25 your lawyer so that you are fully informed of all of your

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1 rights.

2 Do you understand what I've said?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. Open counts?

5 MS. CROWLEY: There are no open counts, your Honor.

6 THE COURT: Would the government just as a matter of
7 prudence move to dismiss any open counts?

8 MS. CROWLEY: Certainly. The government moves to
9 dismiss any open counts to the extent they exist.

10 THE COURT: OK. Defense agrees?

11 MR. LICHTMAN: Yes, your Honor.

12 THE COURT: Any open counts dismissed on the motion of
13 the government.

14 OK. Anything else?

15 MS. CROWLEY: Nothing from the government.

16 MR. LICHTMAN: Nothing from the defense, your Honor.

17 THE COURT: OK. Good afternoon, all.

18 MS. CROWLEY: Thank you, your Honor.

19 MR. LICHTMAN: Thank you.

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